

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JESSICA MEGHINASSO,

Plaintiff,

v.

MERCEDES-BENZ USA, et al.,

Defendant.

CASE NO. C17-5930-LK

ORDER REGARDING ORDER TO
SHOW CAUSE AND MOTION
FOR LEAVE TO FILE LIMITED
RESPONSE

This matter came before the Court on the Court's Order to Show Cause, Dkt. No. 208, and Defendants' Motion for Leave to File Limited Response to Plaintiff's Response to Order to Show Cause, Dkt. No. 217.

Plaintiff previously filed a motion for sanctions alleging that Defendants failed to timely produce discovery that the parties and the Court have referred to as the "Keiper discovery."¹ Dkt. No. 170 at 13. Plaintiff sought trial sanctions or in the alternative, to be "permitted to develop a supplemental expert opinion on the Keiper discovery." *Id.* n.1. In ruling on the parties'

¹ Because information regarding the Keiper discovery has been filed under seal and redacted from the parties' filings, the Court will not further describe the Keiper discovery in this publicly filed order.

1 cross motions for summary judgment, the Court denied Plaintiff's motion for sanctions and
2 ordered Plaintiff to show cause "why a supplemental expert opinion is necessary in light of the
3 Keiper discovery." Dkt. No. 208 at 41-42. After Plaintiff filed her response to the order to show
4 cause, Defendants filed a motion for leave to file a limited response to Plaintiff's response,
5 stating that they "do not object to Plaintiff's specific request for leave to offer testimony from her
6 expert Thomas Fries as stated in his supplemental report dated July 16, 2021." Dkt. No. 217 at 1.
7 Based on Plaintiff's response to the order to show cause and Defendants' statement that they do
8 not object to the supplemental report, the Court finds that Plaintiff has shown cause to allow the
9 July 16, 2021 supplemental report from Mr. Fries.

10 Defendants also seek leave to offer rebuttal testimony from their experts, "including
11 those by Dr. Livernois in his declaration" filed in support of their motion for summary judgment.
12 Dkt. Nos. 154-155. However, the Court has already ruled on Defendants' motion for summary
13 judgment, so the scope of the evidence regarding that motion is no longer before the Court.
14 Moreover, it is procedurally improper to include a request for affirmative relief in a response
15 brief. Even if it were not procedurally improper, Defendants' request to potentially offer
16 additional rebuttal reports from other unidentified experts is too vague to consider, and in any
17 event the request to offer that evidence at trial is premature. If Plaintiff seeks to exclude evidence
18 at trial, she can file a motion *in limine* if necessary. The Court GRANTS Defendants' motion to
19 file the limited response, Dkt. No. 217; the Court has considered the response but does not grant
20 the relief improperly requested therein.

21 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
22 to any party appearing pro se at said party's last known address.

23 Dated this 25th day of January, 2022.



Lauren King
United States District Judge